

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of HMS Cleaners, Inc.	: : :	: : :
		AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision of a Determination or Refund of Corporation Franchise Tax under Article 9A of the Tax Law for the Fiscal Year Ended 5/31/82.	: : : :	

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 16th day of July, 1985, he served the within notice of Decision by certified mail upon HMS Cleaners, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

HMS Cleaners, Inc.
796 Carman Ave.
Westbury, NY 11590

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of July, 1985.

David Parchuck

James A. Chapman

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HMS Cleaners, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Year Ended 5/31/82. :
:

AFFIDAVIT OF MAILING

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 16th day of July, 1985, he served the within notice of Decision by certified mail upon Eric Weiss, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eric Weiss
Weinberger, Ross & Strent
125 Mineola Ave.
Roslyn Heights, NY 11577

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
16th day of July, 1985.

David Parchuck

Ann M. O'Connell

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 16, 1985

HMS Cleaners, Inc.
796 Carman Ave.
Westbury, NY 11590

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Eric Weiss
Weinberger, Ross & Strent
125 Mineola Ave.
Roslyn Heights, NY 11577
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HMS CLEANERS, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal	:	
Year Ended May 31, 1982.	:	

Petitioner, HMS Cleaners, Inc., 796 Carman Avenue, Westbury, New York, 11590, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ended May 31, 1982 (File No. 44559).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on March 1, 1985 at 9:00 A.M. Petitioner appeared by Weinberger, Ross & Strent, CPA's (Eric Weiss, CPA). The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq. of counsel).

ISSUE

Whether petitioner was entitled to exemption from corporation franchise tax as an electing subchapter S corporation for its fiscal year ended May 31, 1982.

FINDINGS OF FACT

1. Petitioner, HMS Cleaners, Inc. (HMS) was incorporated in New York State on April 21, 1980 and began doing business in New York State on June 1, 1980. HMS operates a dry cleaning business at premises located at 796 Carman Avenue in Westbury, New York. HMS's sole shareholder is Mr. Chung Joe Kim.

2. On or about June 6, 1980, HMS filed an election (Form 2553) to be taxable as a small business corporation (Subchapter S) for Federal tax purposes, which election was accepted by the Internal Revenue Service.

3. For the fiscal year at issue herein, HMS filed a New York State Corporation Franchise Tax Report (Form CT-4) as an electing subchapter S corporation reporting no tax due, attached to which, as required, was a U.S. Small Business Corporation Income Tax Return (Form 1120 S).

4. On November 24, 1982 the Audit Division issued to HMS a Notice and Demand for Payment of Corporation Tax Due for the fiscal year ended May 31, 1982 in the amount of \$1,143.00, plus interest, based upon HMS's failure to pay corporation franchise tax due.

5. It is asserted by HMS that HMS and its sole shareholder, Mr. Kim, timely elected small business corporation tax treatment for New York State purposes by the filing of an Election of Shareholders of a Small Business Corporation for New York State Personal Income Tax and Corporation Franchise Tax Purposes (Form CT-6), as soon as such Form CT-6 was available.

6. Attached to the petition herein was an unsigned copy of a Form CT-6 pertaining to HMS, which form was dated July 27, 1981. Petitioner's representative, Mr. Eric Weiss, who also prepared petitioner's tax reports, testified that as was his firm's practice, a timely Form CT-6 was prepared and given to Mr. Kim, along with other (unspecified) forms, for signature and mailing. Mr. Weiss explained that the Form CT-6 was prepared as soon as such forms were made available by the State, and that it would have been Mr. Kim's responsibility to sign and mail any forms left with him according to instructions given to Mr. Kim per the usual business practice of Mr. Weiss' firm.

7. Mr. Kim did not appear and testify at the instant hearing, but did submit an affidavit attesting to his intention that HMS be treated as an electing small business corporation for all tax purposes and asserting that a timely election for such treatment was made for New York purposes.

8. HMS's entire New York State taxable income (\$11,427.00) per its Form CT-4 (Schedule "A", line 5) was reported as taxable income at Schedule "A" (line 44) of Mr. Kim's 1982 New York State Resident Income Tax Return (Form IT-201) and was subject to tax along with Mr. Kim's other taxable income reported thereon.

CONCLUSIONS OF LAW

A. That Tax Law section 209.8, as in effect during the period in question, permitted shareholders of a corporation which had made an election under subchapter S of the Internal Revenue Code to elect to be taxed on the corporation's items of income, loss, deduction, etc., as specified, under the personal income tax law (Article 22), with the corporation thereby becoming exempt from corporation franchise tax (Article 9-A). This provision pertained to (corporations') taxable years beginning on or after January 1, 1981, and required that every shareholder of the corporation make the election to be taxed, as specified, under Article 22.

B. That in order for petitioner to have been exempt from corporation franchise tax, its sole shareholder, Mr. Kim, was required to make the necessary election by filing form CT-6 within the time period specified by Tax Law section 660.

C. That petitioner has failed to prove that the necessary election was made within the specified time period. Accordingly, since a valid, timely


election has not been shown to have been made, petitioners remain subject to tax under Tax Law Article 9-A for the fiscal year at issue.

D. That the petition of HMS Cleaners, Inc. is hereby denied and the Notice and Demand dated November 24, 1982, is sustained.

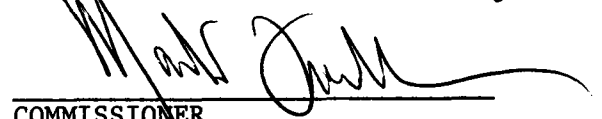
DATED: Albany, New York

STATE TAX COMMISSION

JUL 16 1985


PRESIDENT


COMMISSIONER


COMMISSIONER